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Committee on the Elimination of Discrimination against Women

Communication No. 48/2013

Views adopted by the Committee at its sixtieth session (16 February-6 March 2015)

Submitted by:	E.S. and S.C. (represented by the Women's Legal Aid Centre and the International Women's Human Rights Clinic)
Alleged victims:	The authors
State party:	United Republic of Tanzania
Date of communication:	12 November 2012 (initial submission)
References:	Transmitted to the State party on 21 January 2013 (not issued in document form)
Date of adoption of views:	2 March 2015

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Annex

Views of the Committee on the Elimination of Discrimination against Women under the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (sixtieth session)

concerning

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Submitted by:	E.S. and S.C. (represented by the Women's Legal Aid Centre and the International Women's Human Rights Clinic)
Alleged victims:	The authors
State party:	United Republic of Tanzania
Date of communication:	12 November 2012 (initial submission)

The Committee on the Elimination of Discrimination against Women, established under article 17 of the Convention on the Elimination of All Forms of Discrimination against Women,

Meeting on 2 March 2015,

Adopts the following:

Views under article 7 (3) of the Optional Protocol

1. The authors of the communication are E.S. (born in 1970) and S.C. (born in 1974). They are both Tanzanian nationals whose husbands have died. They claim to be victims of a violation by the United Republic of Tanzania of their rights under articles 2 (c), 2 (f), 5 (a), 13 (b), 15 (1), 15 (2), 16 (1)(c) and 16 (1)(h) of the Convention on the Elimination of All Forms of Discrimination against Women. The authors are represented by counsel, the Women's Legal Aid Centre in Dar es Salaam and the International Women's Human Rights Clinic of Georgetown University Law Center. The Convention and the Optional Protocol thereto entered into force for the State party on 19 September 1985 and 12 April 2006, respectively.

Facts as presented by the authors

2.1 In support of their case, the authors give an overview of relevant provisions of customary law governing inheritance in the State party. According to the authors,

* The following members of the Committee participated in the examination of the present communication: Ayse Feride Acar, Gladys Acosta Vargas, Malays Arocha Dominguez, Barbara Bailey, Niklas Bruun, Louiza Chalal, Náela Gabr, Hilary Gbedemah, Nahla Haidar, Ruth Halperin-Kaddari, Yoko Hayashi, Lilian Hofmeister, Ismat Jahan, Dalia Leinarte, Lia Nadaraia, Pramila Patten, Silvia Pimentel, Biancamaria Pomeranzi, Patricia Schulz and Xiaoqiao Zou.

there are three separate "intestate succession inheritance schemes"[1] in the State party: Islamic law,[2] customary law and the Indian Succession Act.[3] Customary law has been codified since 1963 and is today in force in 30 districts, making it the most commonly applied form of law in the State party.

2.2 Under customary inheritance law, as codified in schedule 2 to the Local Customary Law (Declaration) (No. 4) Order, inheritance rules are patrilineal (rule 1). Rule 5, which pertains to the right to administer the deceased's estates, states that "the administrator of the deceased's property is the eldest brother of the deceased, or his father, and if there is no brother or father, it can be any other male relative chosen with the help of the clan council". Only if there are no male relatives can a sister become the administrator. Men are given the right to administer both property and funerals (rule 2).

2.3 With regard to the inheritance of widows, rule 27 states that "the widow has no share of the inheritance if the deceased left relatives of his clan; her share is to be cared for by her children, just as she cared for them". Furthermore, according to rule 51, the deceased's heir is to have the responsibility of taking care of the widow.

2.4 Customary law also prohibits women and daughters from inheriting clan land[4] and grants them limited inheritance rights, given that it establishes a ranking system according to which daughters are designated in the lowest rank. According to rule 21, there are three degrees of inheritance. According to rule 25, "the first degree is for the first son, the second degree is for the other sons and the third degree is for daughters". In addition, rules 22 and 23 state that "the person in the first degree is the first heir and he gets a larger share of inheritance than any other heirs" and that "those in the second degree will get a bigger share than those in the third degree". Furthermore, the rights of other female relatives of the deceased, such as his sisters or his mother, are limited and also allocated at the lowest rank. Pursuant to rule 44, if there are no children or grandchildren who have some inheritance rights, "the deceased's brother and sister shall inherit", but "the first brother inherits in the first degree, the other brother in the second degree and the sister in the third degree".[5] Likewise, under rule 47, if the "deceased did not leave any brothers or sisters and if they did not have any children, then his father shall inherit", thereby precluding the mother from inheriting.

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[1] Wording used by the authors, who refer to Tamar Ezer, "Inheritance law in Tanzania: the impoverishment of widows and daughters", *Georgetown Journal of Gender and the Law*, vol. 7 (2006), pp. 599-617, at p. 606.

[2] Islamic law governs the inheritance of Muslims, approximately 45 per cent of the population.

[3] The Indian Succession Act consists of codified English law from 1865, imported to the United Republic of Tanzania from India by the British. The authors indicate that the Act is rarely applied in the State party. It is mostly applied to Europeans, given that people of African origin are governed by customary rules.

[4] Under rule 20, women are allowed to inherit, except clan land. They can use clan land without selling it during their lifetime. If there are no men in that clan, a woman can inherit the land completely. Under rule 31, female children may not inherit clan land.

[5] Rule 30 gives an example with the division of 24 cattle and indicates that the first degree of inheritance would go to the eldest son, of 23 years of age, who would receive nine cattle. The second degree would be split between two younger sons, of 20 years of age, who would receive five cattle, and another, of 14 years of age, who would receive four cattle. The third degree would be split between three daughters. The eldest daughter, of 25 years of age, despite being the eldest child, would receive three cattle and the two younger daughters, of 22 and 18 years of age, respectively, would receive two cattle and a bull/cow, respectively.

2.5 E.S. entered into customary marriage with M.M. in 1989. She is a tailor and has three children: two daughters, C.M., born in 1990, and H.M., born in 1992, and a son, S.M., born in 1995. During her marriage, she and her husband jointly acquired the house in which they lived, which formed part of her husband's estate. Her husband died in 1999. Immediately thereafter, her brother-in-law ordered her to vacate the house where she was living, and she was told that under Sukuma customary law she could not inherit her husband's estate. She applied to the Shinyanga Urban Primary Court Probate in order to serve as administrator of the estate. Pursuant to local customary inheritance laws, the court awarded letters of administration to her brother-in-law, who has been using the estate for his personal profit, renting out the property. E.S. had to leave the house with her three minor children (of 9, 7 and 4 years of age, respectively) and live with her parents in a neighbouring district without any support from her late husband's family.

2.6 S.C. married R.M. in 1999. She is also a tailor and has a daughter, N.R., born in November 2000. Her husband died in August 2000. He had built the house in which they lived, before their marriage. She and her husband had jointly purchased a car. When her husband died, both her brother-in-law and her mother-in-law ordered her to vacate the house because she had not contributed to the cost of its construction. They also decided to sell the car. Her brother-in-law applied to the Shinyanga Urban Primary Court Probate to obtain letters of administration. The opposition of S.C. notwithstanding, the Court appointed her brother-in-law as administrator. S.C. had to move out of her home and rented a house. She received no support from her late husband's family.

2.7 On 16 September 2005, the authors initiated legal proceedings[6] before the High Court pursuant to article 30 (3) of the Constitution,[7] in which they requested that the customary inheritance provisions as codified in the Local Customary Law (Declaration) (No. 4) Order (rules 1-3, 5, 19-23, 25, 27-38, 41, 42, 44, 47, 48, 50 and 51) should be struck down because they contravened articles 13 (1) and 13 (5) of the Constitution[8] and the State party's international obligations, including the Convention. The authors argued in particular that the provisions were discriminatory against widows, their daughters and other female relatives and

[6] The authors were represented by the Women's Legal Aid Centre.

[7] Article 30 (3) of the Constitution states that "any person claiming that any provision in this part of this chapter or in any law concerning his right or duty owed to him has been, is being or is likely to be violated by any person elsewhere in the United Republic, may institute proceedings for redress in the High Court".

[8] Article 13 (1) of the Constitution provides that "all persons are equal before the law and are entitled, without any discrimination, to protection and equality before the law". Article 13 (5) states that "for the purposes of this article the expression 'discriminate' means to satisfy the needs, rights or other requirements of different persons on the basis of their ... sex ... such that certain categories of people are regarded as weak or inferior and are subjected to restrictions or conditions whereas persons of other categories are treated differently or are accorded opportunities or advantage outside the specified conditions or the prescribed necessary qualifications". The authors also refer to article 13 (2), which states that "no law enacted by any authority in the United Republic shall make any provision that is discriminatory either of itself or in effect", and to article 29 (2), according to which "every person in the United Republic has the right to equal protection under the laws".

therefore violated the constitutional guarantees of equal protection and non-discrimination.[9]

2.8 On 8 September 2006, the High Court concluded that "the impugned paragraphs [were] discriminatory in more ways than one", but that "it was impossible to effect customary change by judicial pronouncements". It held in particular that it was not contested that the impugned provisions were discriminatory, that they placed women as inferior to men and that they gave preferential protection to men. It decided, however, that it would not overturn the said provisions on the grounds that doing so would "be opening the Pandora's box, with all the seemingly discriminative customs from our 120 tribes plus following the same path". The Court considered that the best way to remedy the situation was to recommend that the district councils amend the customary laws,[10] but did not order them to do so. It granted no relief to the authors.

2.9 On 15 September 2006, the authors filed a notice of appeal against the judgement of the High Court. Neither the Attorney General nor the Court of Appeal responded. On 24 January 2007, the authors submitted a memorandum of appeal in which they requested the Court to quash the judgement and to declare the impugned provisions unconstitutional. Again, neither the Attorney General nor the Court reacted. In the absence of a response, the authors wrote to the Chief Justice of the Court on 10 February 2009, requesting that their appeal be determined in a timely fashion. They received no response. On 24 September 2010, the authors filed a certificate of urgency with the Court in which they urged it to hear their appeal. By a letter dated 30 September 2010, the Court responded that the appeal would be listed during its next sessions. On 2 December 2010, the authors filed written submissions before the Court, arguing that the decision of the High Court should be set aside and the impugned provisions declared null and void because they violated the Constitution, the Convention and other international human rights instruments. In particular, the authors submitted that the High Court had erred in abdicating its responsibilities under article 30 (5) of the Constitution and section 13 of the Basic Rights and Duties Enforcement Act by failing to declare the impugned provisions unconstitutional despite finding that they discriminated against women.

2.10 The Court of Appeal considered the authors' appeal on 7 December 2010 and dismissed it on 22 December 2010. It noted that the drawn order issued by the High Court erroneously bore two dates: 8 September 2006 and 7 December 2006. It therefore instructed the authors to obtain a new order with the proper date and to

[9] The Attorney General was the respondent and replied, notably, that the authors had failed to exhaust all remedies before bringing a constitutional claim, given that they should have brought a civil action against the administrators in order to obtain their share of the inheritance. The Attorney General submitted that the authors would have succeeded because restrictions against women's rights to inherit self-acquired property were breaking down and courts were being sympathetic to members of the deceased's family who had been denied their rights to the estates of husbands and fathers. The authors responded that the exhaustion of remedies was not a legal prerequisite for filing a constitutional claim and that, in any case, a civil action would not provide them with an effective remedy because it was customary law that prevented them from inheriting equally. The High Court did not address the issue of civil litigation.

[10] The High Court referred in particular to section 12 (2) of the Judicature and Application of Laws Act, which states that "a district council may, if in the opinion of the council it is expedient for the good government and welfare of the area, submit for the consideration of the Minister a recommendation for the modification of any customary law, whether or not a declaration has been recorded".

resubmit the appeal.[11] The authors have unsuccessfully requested a corrected drawn order on several occasions.[12]

Complaint

3.1 The authors claim that the application by the State party of customary inheritance law, as codified in the Local Customary Law (Declaration) (No. 4) Order, has prevented them from administering and inheriting property when their husbands died and has therefore deprived them of their rights under articles 2 (c), 2 (f), 5 (a), 13 (b), 15 (1), 15 (2), 16 (1)(c) and 16 (1)(h) of the Convention, read together with the Committee's general recommendations Nos. 21 and 27 on equality in marriage and family relations and older women and protection of their human rights, respectively.

3.2 The authors emphasize that millions of other women remain governed by discriminatory customary provisions in the State party and experience the same violations that they have themselves faced. In this respect, the authors explain that male relatives are systematically preferred over female relatives and describe in detail the various forms of discrimination experienced by women in inheritance matters, whether as widows, daughters, mothers or other female relatives of the deceased. In this connection, the authors stress that codified customary law not only denies widows property rights and prevents them from inheriting, but also grants daughters and other female relatives only a limited share of inheritance, prevents mothers from enjoying equal rights to inherit a child's estate and prohibits women and girls from inheriting clan land. The authors recall that, in its concluding observations to the State party in 1990, 1998 and 2008, the Committee consistently expressed its concern about the existence of such discriminatory provisions in inheritance law and about the delay in eliminating them.[13]

3.3 The authors consider that their rights under articles 2 (c), 2 (f) and 5 (a) with regard to administration, ownership and acquisition of property upon the dissolution of marriage have been violated by the State party, owing to prevailing cultural norms and traditions. The authors submit that, consequently, the State party has failed to take legislative action to abolish the existing codified customary law, despite having acknowledged several times that its provisions were discriminatory against women.[14] In addition, the State party's courts have also failed to provide the authors with an effective remedy and to protect them against the application of those discriminatory customary rules by refusing to overturn them.

3.4 The authors further allege a violation of article 13 (b) because they have not been provided with equal economic rights and opportunities. They submit that, without equal inheritance rights, the inability to benefit from land ownership has denied them access to mortgages and other forms of financial credit.

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[11] The Court of Appeal held that the defect "rendered the appeal incompetent" and struck it out "with liberty to properly refile the same without payment of fees".

[12] Annexes show that the authors made requests on 23 May and 9 August 2012.

[13] See A/45/38, para. 99; A/53/38/Rev.1, part two, para. 230; and A/63/38, part two, para. 111.

[14] The authors refer to reports of the Law Reform Commission of Tanzania in which it has been stated, among other things, that women have been denied their basic rights. They refer also to the State party's reports to the Committee in 1988, 1997 and 2007, in which specific reference was made to customary inheritance law being discriminatory.

3.5 With regard to article 15 (1), the authors submit that they were denied equality before the law under the Local Customary Law (Declaration) (No. 4) Order. They add that, although some provisions appear neutral, such as rule 28, which provides that a husband is not to inherit the property of his wife,[15] they are in effect discriminatory because women do not own property during the marriage, even if jointly acquired.

3.6 The authors also claim that the application of codified customary inheritance law, in particular rules 2 and 5, has prevented them from administering the property of their late husbands by denying them legal capacity with regard to the administration of property, in violation of article 15 (2).

3.7 In addition, the authors state that, by having been denied letters of administration and excluded from inheriting property upon the dissolution of their marriage, they were not afforded the same rights as men, which amounts to a violation of articles 16 (1)(c) and 16 (1)(h).

3.8 With regard to the exhaustion of domestic remedies, the authors submit that the available domestic remedies have been unreasonably prolonged by the State party, given that their appeal has been pending before the Court of Appeal for more than six years and has still not been heard on the merits. The authors also recall that it took more than four years for the Court to hold a hearing and that it dismissed the appeal on a procedural technicality, which the authors have sought to address by obtaining a corrected version of the order of the High Court, to no avail. In this regard, the authors refer to the Committee's jurisprudence, according to which a period exceeding three years between the initial incident and the issuance of a decision has been considered to be an unreasonably prolonged delay.[16]

3.9 The authors also submit that no effective remedies have been provided by the State party, given that neither the High Court nor the Court of Appeal has provided adequate means of redress. In particular, the authors argue that the High Court erred when it held that legal reform through the district councils would be the best way to remedy the discrimination created by the customary law provisions.[17] The authors consider such a remedy to be inadequate and unlikely to bring effective relief because it would amount to using the same mechanisms that actually created the discriminatory provisions and may therefore propagate such discrimination. The effectiveness of the remedy is also limited in practice for the authors, given that there are seven district councils in Shinyanga alone, which are predominantly male and can exercise their discretion in deciding to amend customary law.

3.10 Furthermore, the authors recall that they have used remedies available before local primary courts in order to attempt to be granted letters of administration, to no avail. They submit that challenging the ordinary process of administration through civil action would not have proved an effective remedy, given that the courts would

[15] There are exceptions to this rule, i.e. if the wife left a will or if she had no children and no relatives left in her clan.

[16] See communication No. 2/2003, *A. T. v. Hungary*, views adopted on 26 January 2005, para. 8.4. It is stated that "a delay of over three years from the dates of the incidents in question would amount to an unreasonably prolonged delay within the meaning of article 4, paragraph 1, of the Optional Protocol, particularly considering that the author has been at risk of irreparable harm and threats to her life during that period".

[17] The authors explain that the High Court relied on section 8 (2) of the Basic Rights and Duties Enforcement Act to consider that it did not have to declare the impugned provisions unconstitutional when other adequate remedies for the violations alleged were available.

have applied the same codified customary law that they are seeking to challenge[18] and would not necessarily have considered the principle of equality in adjudicating the matter. The authors recall that they cited various cases during the proceedings to demonstrate that courts have applied customary law to the detriment of widows and daughters.[19] The authors further stress that the Court of Appeal has explicitly ruled that parties could not challenge the constitutionality of a law in an appeal before a subordinate court and that such an appeal had to be filed with the High Court.[20]

3.11 The authors call upon the Committee to request that they be permitted to inherit their equal share under the Indian Succession Act,[21] be granted the right to serve as administrators of the estates, as provided in the Probate and Administration of Estates Act,[22] and be provided with compensation for their financial and emotional loss. Furthermore, they request that the Committee recommend that the discriminatory provisions of the Local Customary Law (Declaration) (No 4.) Order be abolished and the provisions of the Indian Succession Act regarding inheritance and of the Probate and Administration of Estates Act regarding administration rights be applied to women who are still subject to customary inheritance rules. Alternatively, they request that the Committee recommend that legislation be enacted with a view to guaranteeing women equal rights to administer and inherit property, including clan land, in line with the Convention.

State party's observations on admissibility and merits

4. The communication was transmitted to the State party on 21 January 2013. The State party was requested to provide its observations on the admissibility and the merits by 22 July 2013. In the absence of any response, a first reminder was sent on 19 August 2013 and a second reminder on 31 January 2014. A third reminder was sent on 2 June 2014, in which the State party was informed that the Committee would examine the communication on the basis of the information available on file.

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[18] The authors refer to the Judicature and Application of Laws Act. Section 11 provides for all courts that "customary law shall be applicable to, and courts shall exercise jurisdiction in accordance therewith in, matters of a civil nature — (a) between members of a community in which rules of customary law relevant to the matter are established and accepted, ... (b) relating to any matter of status of, or succession to, a person who is or was a member of a community in which rules of customary law relevant to the matter are established and accepted".

[19] The authors further refer to *Benedict v. Benedict*, in which none of the widows inherited any property according to customary Haya law. The Court of Appeal stated that, "even if the appellant had properly challenged the administration of the estate of her late husband, she would not have succeeded, since her matrimonial right of residence upon death of her husband is under customary law concomitant with her right to live with her children in a house of her deceased husband".

[20] The authors refer to *Isaa v. Mututa* and *Nteme v. Hassani and Baruti*, with the latter cited for this point by *Ephrahim v. Pastory and Another*.

[21] The authors explain that, under the Indian Succession Act, men and women of the same relationship to the deceased receive the same share of inheritance. They submit that, pursuant to paragraph 29 of the Act, they would each be entitled to one third of the estate and the remaining two thirds would be allocated to their children.

[22] The authors explain that, under the Probate and Administration of Estates Act, gender-neutral administration rights are granted in various inheritance proceedings. Primary courts do not have jurisdiction to apply the Act. They state that, pursuant to section 33 of the Act, they have an "immediate interest" in the estates and are "entitled" to a share of them under the Indian Succession Act.

Additional information submitted by the authors

5. On 20 March 2013, the authors informed the Committee that, on 16 January 2013, they had sent a third letter requesting the Registrar of the High Court to provide them with a corrected version of the drawn order so that they could refile their appeal. The authors' additional submission was transmitted to the State party on 21 June 2013. According to the information before the Committee, no reply had been received as at the date of the examination of the communication.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 In accordance with rule 64 of its rules of procedure, the Committee must decide whether the communication is admissible under the Optional Protocol. Pursuant to rule 72 (4), it is to do so before considering the merits of the communication.

6.2 The Committee takes note of the authors' claims under articles 2 (c), 2 (f), 5 (a), 13 (b), 15 (1), 15 (2), 16 (1)(c) and 16 (1)(h) of the Convention, read in conjunction with the Committee's general recommendations Nos. 21 and 27, with regard to codified customary law provisions that have prevented them from administering and inheriting property following the death of their husbands.

6.3 The Committee recalls that, under article 4 (1) of the Optional Protocol, it is precluded from considering a communication unless it has ascertained that all available domestic remedies have been exhausted unless the application of such remedies is unreasonably prolonged or unlikely to bring effective relief. In this connection, the Committee takes note of the authors' arguments to the effect that their appeal submitted on 15 September 2006 to the Court of Appeal has still not been examined and that no remedy available[23] is likely to bring effective relief. The Committee observes that the authors' appeal had been pending for four years before a hearing was scheduled by the Court, that the Court summarily dismissed the appeal owing to a minor defect in the date of the order of the High Court and that the defect is not attributable to the authors. The Committee further observes that the authors have unsuccessfully sought several times to have the defect remedied by the High Court in order to be able to resubmit their appeal and that they did so again on 16 January 2013, without having received a response from the High Court to date. In the light of the information available to it and in the absence of any observations by the State party on the admissibility of the communication, the Committee considers that such protracted appeal proceedings have been unreasonably prolonged within the meaning of article 4 (1).

6.4 The Committee considers that the authors have sufficiently substantiated their claims under articles 2 (c), 2 (f), 5 (a), 13 (b), 15 (1), 15 (2), 16 (1)(c) and 16 (1)(h) of the Convention for the purposes of admissibility. Accordingly, having found no impediment to the admissibility of those claims, the Committee proceeds to their consideration on the merits.

[23] See paras. 3.9 and 3.10 above, i.e. the remedy recommended by the High Court of leaving district councils to amend the customary law or using civil litigation instead of a constitutional claim.

Consideration of the merits

7.1 The Committee recalls that, under article 7 (1) of the Optional Protocol, the Committee is to consider communications received in the light of all information made available to it by or on behalf of individuals or groups of individuals and by the State party concerned, provided that that information is transmitted to the parties concerned. The Committee notes that the State party provided no observations on the author's claims concerning the admissibility and the merits of the case, despite having received three reminders in that regard. The Committee has therefore considered the present communication in the light of all the information made available to it by the authors, pursuant to article 7 (1).

7.2 The Committee recalls that, under articles 2 (f) and 5 (a) of the Convention, States parties have an obligation to adopt appropriate measures to amend or abolish not only existing laws and regulations but also customs and practices that constitute discrimination against women, including when States parties have multiple legal systems in which different personal status laws apply to individuals on the basis of identity factors such as ethnicity or religion.[24] The Committee also recalls that the accountability of States parties to implement their obligations under article 2 is engaged through the acts or omissions of acts of all branches of the Government, including the judiciary.[25] Under article 16 (1), States parties have an obligation to take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations.[26] In that respect, the Committee recalls its general recommendation No. 29 on article 16 of the Convention (economic consequences of marriage, family relations and their dissolution), which, building upon the principles articulated in, notably, general recommendation No. 21, requires States parties to eliminate discrimination against women at the inception of marriage, during marriage and at its dissolution by divorce or death, as provided for in article 16 of the Convention.[27] States parties therefore have an obligation to adopt laws of intestate succession that comply with the principles of the Convention and that ensure equal treatment of surviving females and males.[28] In that respect, the Committee

[24] See also general recommendation No. 29, para. 12: "Some States parties have multiple legal systems in which different personal status laws apply to individuals on the basis of identity factors such as ethnicity or religion. Some, but not all, of these States parties also have a civil legal code that may apply in prescribed circumstances or by choice of the parties. In some States, however, individuals may have no choice as to the application of identity-based personal status laws." See also general recommendation No. 28, para. 31.

[25] General recommendation No. 28, para. 39.

[26] See communication No. 47/2012, *González Carreño v. Spain*, views adopted on 16 July 2014, para. 9.7.

[27] General recommendation No. 29, para. 6. See also paragraph 7, according to which "the entitlement of women to equality within the family is universally acknowledged". Reference is also made to Human Rights Committee general comment No. 28 on equality of rights between men and women (in particular paras. 23-27) and general comment No. 19 on protection of the family, the right to marriage and equality of the spouses; and Committee on Economic, Social and Cultural Rights general comment No. 16 on the equal right of men and women to the enjoyment of all economic, social and cultural rights (in particular para. 27) and general comment No. 20 on non-discrimination in economic, social and cultural rights.

[28] General recommendation No. 29, para. 53. See also general recommendation No. 21, paras. 34 and 35. In particular, see para. 35: "There are many countries where the law and practice concerning inheritance and property result in serious discrimination against women. As a result of this uneven treatment, women may receive a smaller share of the husband's or father's property at his death than would widowers and sons. In some instances, women are granted

recalls that it is specifically mentioned in general recommendation No. 29 that States parties are required to ensure that disinheritance of the surviving spouse is prohibited.[29]

7.3 As stated in its general recommendation No. 21, the Committee stresses that the rights provided in article 16 (1)(h) overlap with and complement those in article 15 (2) in which an obligation is placed on States parties to give women equal rights to administer property.[30] It is the Committee's view that the right of women to own, manage, enjoy and dispose of property is central to their financial independence and may be critical to their ability to earn a livelihood and to provide adequate housing and nutrition for themselves and for their children, especially in the event of the death of their spouse.[31]

7.4 The Committee further recalls that, under article 13 of the Convention, States parties are required to take all appropriate measures to eliminate discrimination against women in areas of economic and social life, in particular with regard to their right to bank loans, mortgages and other forms of financial credit.

7.5 In addition, the Committee recalls that the application of discriminatory customs perpetuates gender stereotypes and discriminatory attitudes about the roles and responsibilities of women and prevents women from enjoying equality of status in the family and in society at large.

7.6 In the present case, the Committee notes that inheritance matters are governed by multiple legal systems in the State party and that the authors have been subjected to Sukuma customary law on the basis of their ethnicity.[32] The Committee also notes that, although the State party's Constitution includes provisions guaranteeing equality and non-discrimination, the State party has failed to revise or adopt legislation to eliminate the remaining discriminatory aspects of its codified customary law provisions with regard to widows. Consequently, the authors were deprived of the right to administer their husbands' estates and excluded from inheriting any property upon the death of their spouses. The Committee considers that the State party's legal framework, which treats widows and widowers differently in terms of their access to ownership, acquisition, management, administration, enjoyment and disposition of

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limited and controlled rights and receive income only from the deceased's property. Often inheritance rights for widows do not reflect the principles of equal ownership of property acquired during marriage. Such provisions contravene the Convention and should be abolished."

[29] General recommendation No. 29, para. 53. It is also mentioned in the paragraph that States should ensure that "property dispossession/grabbing" is criminalized and that offenders are duly prosecuted. In that respect, see para. 50: "In some States parties, widows are subject to 'property dispossession' or 'property grabbing', in which relatives of a deceased husband, claiming customary rights, dispossess the widow and her children from property accumulated during the marriage, including property that is not held according to custom. They remove the widow from the family home and claim all the chattels, then ignore their concomitant customary responsibility to support the widow and children. In some States parties, widows are marginalized or banished to a different community."

[30] General recommendation No. 21, para. 25.

[31] Ibid., paras. 26-28. See also general recommendation No. 29, para. 49: "Many States parties, by law or custom, deny widows equality with widowers in respect of inheritance, leaving them vulnerable economically upon the death of a spouse."

[32] See general recommendation No. 29, para. 12, and general recommendation No. 28 , para. 18, on intersectional discrimination.

property, is discriminatory and thereby amounts to a violation of article 2 (f) in conjunction with articles 5, 15 and 16 of the Convention.[33]

7.7 Furthermore, the Committee notes that, despite having acknowledged in its judgement of 8 September 2006[34] that the authors were discriminated against by the application of the State party's customary law provisions,[35] the High Court refused to impugn the relevant provisions on the ground that it was impossible to effect customary change by judicial pronouncement and that doing so would be opening a Pandora's Box. The Committee further takes notes of the absence of a response to the authors' appeal by both the Attorney General and the Court of Appeal over a period of four years, the dismissal of the case by the Court of Appeal on a mere procedural technicality for which the authors were not responsible and the absence of any action by the Registrar of the High Court to provide a corrected version of the drawn order. The Committee is of the view that such shortcomings on the part of the judiciary constitute a denial of access to justice and thereby amount to a failure to provide an effective remedy to the authors, in violation of article 2 (c).

7.8 With regard to article 13, the Committee takes note of the authors' contention that widows in the State party are forced to perpetually depend on their male relatives and their children and therefore do not enjoy equal economic opportunities. The Committee also notes that the authors were evicted from their homes when their respective husbands died. Consequently, E.S. had to return to her family and S.C. to rent a house without the support of their late husbands' families. The Committee therefore considers that the authors were left economically vulnerable, with no property, no home to live in with their children and no form of financial support. The Committee is of the view that that state of vulnerability and insecurity has restricted the authors' economic autonomy and prevented them from enjoying equal economic opportunities, in violation of article 13.

7.9 In the circumstances and in the light of the foregoing, the Committee considers that the State party, by condoning such legal restraints on inheritance and property rights, has denied the authors equality in respect of inheritance and failed to provide them with any other means of economic security[36] or any form of adequate redress, thereby failing to discharge its obligations under articles 2 (c), 2 (f), 5 (a), 13 (b), 15 (1), 15 (2), 16 (1) (c) and 16 (1) (h) of the Convention.

8. In accordance with article 7 (3) of the Optional Protocol and taking into account all the foregoing considerations, the Committee considers that the State party has violated the rights of the authors under articles 2 (c), 2 (f), 5 (a), 13 (b), 15 (1), 15 (2), 16 (1)(c) and 16 (1)(h) of the Convention, read in the light of general recommendations Nos. 21, 28 and 29.

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[33] See General recommendation No. 29, para. 10.

[34] See para. 2.9 above.

[35] The Committee recalls that under general recommendation No. 28 States parties are required to ensure that the principle of equality between women and men and of non-discrimination is enshrined in domestic law with an overriding and enforceable status (para. 31). See also paragraph 33: "Courts should draw any inconsistency between national law, including national religious and customary laws, and the State party's obligations under the Convention to the attention of the appropriate authorities, since domestic laws may never be used as justification for failures by States parties to carry out their international obligations."

[36] See General recommendation No. 29, para. 49.

9. The Committee makes the following recommendations to the State party:

(a) *Specifically to the authors of the communication*: grant the authors appropriate reparation and adequate compensation commensurate with the seriousness of the violation of their rights;

(b) *In general*:[37]

(i) Expedite the constitutional review process and address the status of customary laws to ensure that rights guaranteed under the Convention have precedence over inconsistent and discriminatory customary provisions;

(ii) Ensure that all discriminatory customary laws applicable in the State party, in particular provisions of the Local Customary Law (Declaration) (No. 4) Order, are repealed or amended and brought into full compliance with the Convention and the Committee's general recommendations, including by district councils where applicable, with a view to providing women and girls with equal administration and inheritance rights upon the dissolution of marriage by death, irrespective of their ethnicity or religion;

(iii) Ensure access to effective remedies by guaranteeing that courts will refrain from resorting to excessive formalism and/or unreasonable and undue delays;

(iv) Provide mandatory capacity-building for judges, prosecutors, judicial personnel and lawyers, including at the local and community levels, on the Convention, the Optional Protocol thereto and the Committee's jurisprudence, as well as on the Committee's general recommendations, in particular Nos. 21, 28 and 29;

(v) Encourage dialogue by holding consultations between civil society and women's organizations and local authorities, including with traditional leaders at the district level, with a view to fostering dialogue on the removal of discriminatory customary law provisions;

(vi) Conduct awareness-raising and education measures to enhance women's knowledge of their rights under the Convention, in particular in rural and remote areas;

(vii) Put in place a coordinating mechanism in charge of the preparation of the State party's observations on individual communications submitted under the Optional Protocol, as well as of the monitoring of the implementation of the Committee's recommendations under the Optional Protocol.

10. In accordance with article 7 (4) of the Optional Protocol, the State party shall give due consideration to the views of the Committee, together with its recommendations, and shall submit to the Committee, within six months, a written response, including information on any action taken in the light of the views and recommendations of the Committee. The State party is also requested to publish the Committee's views and recommendations and to have them widely distributed in order to reach all relevant sectors of society.

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[37] With reference to the recommendations to the State party in its concluding observations of 1990, 1998 and 2008. See A/45/38, para. 99; A/53/38/Rev.1, part two, para. 230; and A/63/38, part two, para. 111.